

7  
No. 10810

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

VS.

LAWRENCE R. GREEN,  
Respondent.

---

Transcript of the Record

---

Upon Petition to Review a Decision of the Tax Court  
of the United States

FILED

SEP 15 1944

PAUL P. O'BRIEN,  
CLERK



No. 10810

---

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

LAWRENCE R. GREEN,  
Respondent.

---

Transcript of the Record

---

Upon Petition to Review a Decision of the Tax Court  
of the United States



## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

|   | Page   |
|---|--------|
| Amended Petition .....  | 17     |
| Answer .....  | 15     |
| Answer to Amended Petition .....  | 19     |
| Appearances .....   | 1      |
| Appeal:   |        |
| Certificate of Clerk .....  | 75     |
| Statement of Points on Which Petitioner<br>on Review Intends to Rely on ..... | 76     |
| Assignments of Error .....  | 70     |
| Certificate of Clerk .....  | 75     |
| Decision .....  | 39     |
| Designation of Record on Review .....   | 78     |
| Docket Entries .....  | 1      |
| Joint Exhibit No. 2 .....   | 47     |
| Motion to Amend Stipulation of Facts, Joint..                                 | 46     |
| Notice of Filing Petition for Review .....                                    | 72, 73 |
| Opinion .....   | 20     |
| Petition .....  | 3      |
| Exhibit A—Notice of Deficiency .....  | 11     |

|  |    |
|--|----|
| Petition, Amended .....  | 17 |
| Petition for Review and Assignments of Error.  | 66 |
| Statement of Points on Which Petitioner on<br>Review Intends to Rely on Appeal ..... | 76 |
| Stipulation of Facts .....   | 39 |

## APPEARANCES

For Taxpayer:

W. E. BAIRD, ESQ.

For Comm'r:

ANGUS R. SHANNON, ESQ.

Transferred to Judge Smith, 11-12-43.

---

Docket No. 109145

LAWRENCE R. GREEN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

1941

Nov. 12—Petition received and filed. Taxpayer notified. Fee paid.

Nov. 12—Copy of petition served on General Counsel.

Dec. 31—Answer filed by General Counsel.

Dec. 31—Request for hearing in Los Angeles, Calif., filed by General Counsel.

1942

Jan. 5—Notice issued placing proceeding on Los Angeles, Calif. calendar. Service of answer and request made.

1942

- Feb. 4—Request for transfer to Kansas City, Mo. calendar filed by taxpayer. February 9, 1942 Granted.
- Sep. 29—Hearing set November 2, 1942 in Kansas City, Missouri.
- Nov. 3—Hearing had before Judge Smith, on merits. Motion of parties to consolidate with 108546—Granted. Motion of petitioner to receive amended petition. No objection respondent. Submitted. Stipulation of facts filed. Amended petition filed. Briefs due 12-17-42. No exchange.
- Nov. 17—Transcript of hearing 11-3-42 filed.
- Dec. 11—Answer to amended petition filed by General Counsel. Copy served 12-12-42.
- Dec. 11—Joint motion to amend stipulation of facts filed. 12-11-42 Granted.
- Dec. 15—Brief filed by taxpayer.
- Dec. 17—Brief filed by General Counsel.

1944

- Jan. 19—Opinion rendered. Judge Smith, Div. 5. Decision will be entered under Rule 50. 1-9-44. Copy served.
- Feb. 12—Agreed computation of deficiency filed.
- Feb. 16—Decision entered. Judge Smith, Div. 5.
- May 5—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.
- May 16—Proof of service filed by General Counsel.  
(W. E. Baird)



1944

May 18—Proof of service filed by General Counsel.  
(Lawrence Green)

May 26—Designation of portions of record to be  
contained in record on review filed by General Counsel.

May 26—Statement of points filed by General Counsel.

Jun. 5—Proof of service filed.

Jun. 9—Proof of service of designation of portions  
of record and statement of points filed.

[1\*]

---

United States Board of Tax Appeals

Docket No. 109145

LAWRENCE R. GREEN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:PB) dated August 16, 1941, and as a basis of his proceeding alleges as follows:

1. Petitioner is an individual, whose residence ad-

---

\*Page numbering appearing at top of page of original certified Transcript of Record.

dress is 2440 Pine Street, San Diego, California. The return for the period involved was filed with the Collector of Internal Revenue for the Sixth District of California.

2. The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the petitioner on August 16, 1941.

3. The taxes in controversy are income and surtaxes for the calendar year 1939, in the amount of \$646.27.

4. The determination of taxes set forth in the said notice of deficiency is based upon the following errors: [1A]

(a) Commissioner erred in determining that interest in the amount of \$4,143.01, paid by the petitioner in satisfaction of his obligation arising from being a transferee and/or executor of the Estate of L. K. Green, was not an allowable deduction from gross income.

(b) Commissioner erred in determining that legal, accounting, and sundry other expenses amounting to \$1,655.10, paid by petitioner in connection with various taxes and other business matters, was not an allowable deduction from gross income.

(c) Commissioner erred in determining that the expense of Babson's Financial Service Reports, \$180.00, and rental of a safety Deposit box, \$10.00, paid by petitioner, was not an allowable deduction from gross income.

5. The facts upon which the petitioner relies as a basis of this proceeding are as follows:

(a) Petitioner is an individual, a native born citizen of the United States and a resident of California, whose address is 2440 Pine Street, San Diego, California. During 1939 petitioner was under no statutory disability to prevent his entering into and carrying on any business of a legal nature.

(b) Petitioner for the year 1939 duly filed an income tax return, Form 1040, with the Collector of Internal Revenue for the Sixth District of California. In previous years, and for the year 1939, petitioner returned his income and expenses on the basis of cash receipts and disbursements. [2]

(c) In his income tax return for 1939, petitioner claimed as a deduction from gross income interest paid by him during 1939, in the amount of \$4,143.01, being interest paid on an amount representing one-half of additional Federal estate taxes with respect to the Estate of L. K. Green. The Commissioner disallowed the deduction.

(d) Taxpayer's father, L. K. Green, died July 5, 1930, leaving a will making the petitioner and his brother, Ralph J. Green, the two and only residuary beneficiaries of his estate. The two were to share equally in the estate.

(e) The petitioner was duly appointed, qualified, and acted as executor of the L. K. Green Estate.

(f) An estate tax return was duly prepared and filed, and the tax shown thereon was paid. Upon examination of the return, an additional assessment was also paid by the Estate. This deficiency was

not the additional assessment with respect to which the interest in controversy arose.

(g) The Estate of L. K. Green was probated in Johnson County, Kansas. Final report of the executor was filed as of September 4, 1931, showing all specific bequests as having been paid and asking for order for final distribution to residuary beneficiaries and discharge of executor. The final distribution was accomplished, and, on October 13, 1931, the executor of the Estate of L. K. Green was discharged and given full and complete release. [3]

(h) Subsequent to the final settlement of the Estate, the United States Treasury Department asserted the possibility of large additional taxes, either in the nature of additional income taxes or additional estate taxes with respect to the estate of L. K. Green, or additional income taxes for the petitioner and other persons. The amount of such taxes of various kinds being claimed by the United States Government was large. The contemplated additional taxes against the Estate of L. K. Green at one time was over \$100,000.00. The petitioner and/or his brother would have been liable for the payment of such additional tax if it had been sustained, but petitioner and his brother did not believe any such amount of tax was assessable and declined to agree to the payment of such deficiency.

(i) After correspondence, examinations, and negotiations lasting over a period of several years, the matter was finally settled by the residuary beneficiaries (the petitioner and his brother) paying, in July, 1939, an agreed amount of estate tax defi-



ciency, \$17,244.81 plus interest thereon at 6% per annum for eight years and three days from July 5, 1931, to July 8, 1939, in the total amount of \$8,286.01. The petitioner paid one-half of the deficiency and interest and his brother paid the other half.

(j) The interest accruing on the deficiency of \$17,244.81, before and after the final settlement of the Estate of L. K. Green, is as follows:

|                          | Interest on<br>Total Deficiency | One-half Paid<br>by Petitioner |
|--------------------------|---------------------------------|--------------------------------|
| From July 5, 1931 to     |                                 |                                |
| October 13, 1931 .....   | \$ 280.64                       | \$ 140.32                      |
| From October 14, 1931 to |                                 |                                |
| July 8, 1939 .....       | 8,005.37                        | 4,002.69                       |
|                          | <hr/>                           | <hr/>                          |
|                          | \$ 8,286.01                     | \$ 4,143.01                    |

[4]

(k) The Estate of L. K. Green had been entirely distributed and had no assets or funds with which to pay a tax after October 13, 1931. The tax deficiency became the obligation of petitioner and his brother because of their being transferees of the Estate of L. K. Green, and the petitioner was also personally liable because of having been the executor of the Estate.

(l) Petitioner, in order to eliminate or reduce his obligation for various alleged taxes as transferee of the Estate of L. K. Green and to eliminate or reduce his obligation with respect to additional income taxes on returns filed by him, and in order to conserve his estate and prevent it from being reduced by excessive and illegal taxes and resultant

interest, engaged legal and accounting services for such purposes. There was also traveling expense paid in connection with trips regarding tax matters, such trips being business trips and not personal pleasure trips.

(m) Petitioner was required by law to file an income tax return and, in order to know that such return for the year 1938 was properly prepared for filing in 1939, he engaged the services of a certified public accountant.

(n) During 1939 petitioner paid the following legal and accounting fees and sundry expenses:

Baird, Kurtz & Dobson, for services and expenses of  
W. E. Baird:

|   |             |
|---|-------------|
| For preparation of individual income tax returns<br>for 1938 .....  | \$ 60.00    |
| Portion of expenses in connection with trip to Cali-<br>fornia for preparation of various income tax re-<br>turns for 1938 .....  | 5.00        |
| One-half of fee for settling L. K. Green Estate<br>matters .....  | 280.00      |
| One-half of expenses of trip to Wichita, Kansas,<br>regarding L. K. Green Estate tax matters, L. K.<br>Green income tax matters, and individual income<br>tax matters ..... | 7.60        |
| Fee for Gift Tax Settlement and sundry other<br>minor matters .....   | 40.00       |
| A. Z. Patterson, legal fees and expenses.....   | 1,200.00    |
| One-half traveling expenses from California to Kan-<br>sas City regarding various tax matters .....   | 62.50       |
|   | <hr/>       |
|   | \$ 1,655.10 |
|   | <hr/>       |

[5]

The Commissioner disallowed the foregoing items aggregating \$1,655.10 which petitioner had deducted in his 1939 income tax return.

(o) For the year 1939, petitioner received a salary of \$12,000.00 as an official of a corporation, and also received some director's fees. One-half of such salary and fees was reported by petitioner and one-half by his wife, Mrs. Georgia M. Green. Petitioner also owned a considerable amount of stocks and bonds. He owned a small amount of oil royalties. He owned an interest in real estate in Canada, and also owned and operated an interest in real estate in California. Petitioner's gross income for 1939, exclusive of salary and exempt or partially exempt interest, was \$24,823.28.

(p) Petitioner subscribed for Babson's Financial Service Reports, and for the year 1939 paid \$180.00 for such service reports, which were an ordinary and necessary business expense for his business of managing his securities, from which he derived the greater portion of his income. Petitioner deducted the \$180.00 as an ordinary and necessary business expense. The Commissioner disallowed the deduction.

(q) For the protection and safe keeping of his various securities, petitioner rented a safety deposit box for the year 1939, and paid thereon rental of \$10.00 plus tax of \$1.00, which was an ordinary and necessary expense in connection with the management of his securities. Petitioner deducted the \$11.10 as an ordinary and necessary business expense. The Commissioner disallowed \$10.00.

(r) In the shipping of such securities, petitioner incurred and paid during 1939 expense in the amount of \$2.02, which the petitioner deducted as an ordinary and necessary business expense in con-

nection with the management of his securities. The Commissioner did not disallow this deduction. [6]

(s) Domestic corporations which engage the services of lawyers and accountants and have sundry expenses in connection with preparation of income tax returns or in connection with the protest and appeal of tax matters are allowed by the Commissioner to deduct such expenses as ordinary and necessary expenses paid or incurred in carrying on any trade or business. Also, domestic corporations which are investors in securities and pay expenses for financial services and rental of safety deposit boxes for the safe keeping of such securities are allowed by the Commissioner to deduct such expenses as ordinary and necessary expenses paid or incurred in carrying on a trade or business.

Wherefore, the petitioner prays that this Board may hear the proceeding and determine that the interest in controversy, in the amount of \$4,143.01, was paid by the petitioner on his obligation and should be allowed as a deduction; also that there should be no discrimination between an individual and a corporate taxpayer in allowing deductions under Section 23(a) of the Internal Revenue Code, and that the legal, accounting, and other expenses, including cost of financial service reports and safety deposit box rental, should be allowed petitioner as a deduction; and that \$646.27 of the deficiency as



determined by the Commissioner should be disallowed.

W. E. BAIRD, C. P. A.  
Counsel for Petitioner  
701 Fidelity Building  
Kansas City, Missouri

(Duly Verified.) [7]

EXHIBIT "A"

Form 1230

Treasury Department  
Internal Revenue Service  
12th Floor,  
U. S. Post Office and Court House  
Los Angeles, California

Office of  
Internal Revenue Agent  
in Charge  
Los Angeles Division  
LA:IT:90D:PB

SN-IT-1

Aug. 16, 1941

Mr. Lawrence R. Green  
2440 Pine Street  
San Diego, California

Sir:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1939 discloses a deficiency of \$728.18 as shown in the statement attached.

In accordance with the provisions of existing in-

ternal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING

Commissioner,

By R. B. SULLIVAN

Internal Revenue Agent

Enclosures:

Statement

Form of waiver. [9]

STATEMENT

LA:IT:90D:PB

Mr. Lawrence R. Green

2440 Pine Street

San Diego, California

Tax Liability for the Taxable Year Ended

December 31, 1939

|            | Liability   | Assessed | Deficiency |
|------------|-------------|----------|------------|
| Income Tax | \$ 1,063.75 | \$335.57 | \$728.18   |

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated March 4, 1941 and to your protest dated May 16, 1941.

If you do not acquiesce in all of the adjustments making up the deficiency indicated, but desire to stop the accumulation of interest on that part of the deficiency resulting from adjustments to which you agree, please fill out the enclosed form of waiver, inserting therein the amount of the deficiency you desire to have assessed at once. The execution of the form for the agreed portion of the deficiency will not deprive you of your right to petition the United States Board of Tax Appeals for a re-determination of the deficiency.

ADJUSTMENTS TO NET INCOME

|   |    |           |
|---|----|-----------|
| Net income as disclosed by return.....        | \$ | 6,676.29  |
| Additional income and unallowable deductions: |    |           |
| (a) Dividends received .....                  | \$ | 523.05    |
| (b) Interest received .....                   |    | 335.00    |
| (c) Capital gain .....                        |    | 55.83     |
| (d) Interest disallowed .....                 |    | 4,143.01  |
| (e) "Other deductions" disallowed..           |    | 1,845.10  |
|   |    | 6,901.99  |
| Net income adjusted .....                     | \$ | 13,578.28 |

## EXPLANATION OF ADJUSTMENTS

(a) and (b) The amounts of dividends received and interest received on corporation bonds are understated in your return \$523.05 and \$335.00, respectively.

(c) You have included in income in your return \$167.50 of \$335.00 gain realized from the sale of Memphis Power and Light Company preferred stock held for more than 18 months but not for more than 24 months. Under the provisions of section 117(b) of the Internal Revenue Code 66-2/3 per centum of the gain of \$335.00 is to be taken into account, and therefore an addition to income is made in the amount of \$55.83.

(d) The deduction of \$4,143.01 claimed for "interest on deficiency of estate taxes—Estate of L. K. Green" is not allowable under the provisions of section 23(b) of the Internal Revenue Code.

(e) The following deductions claimed on line 18 of your return are disallowed because they do not constitute expenses of carrying on a trade or business within the meaning of section 23(a) of the Internal Revenue Code:

|  |                   |
|--|-------------------|
| Legal and accounting, including estate tax,<br>gift tax and other old tax matters..... | \$1,655.10        |
| Financial report service—Babson .....  | 180.00            |
| Rent of safety deposit box .....   | 10.00             |
| <b>Total.....</b>  | <b>\$1,845.10</b> |

## COMPUTATION OF TAX

|   |              |
|---|--------------|
| Net income adjusted .....                           | \$ 13,578.28 |
| Less: Personal exemption (claimed by wife)          |              |
| Balance (surtax net income).....                    | \$ 13,578.28 |
| Less: Earned income credit .....                    | 604.75       |
| <hr/>   |              |
| Net Income subject to normal tax.....               | \$ 12,973.53 |
| Normal tax at 4% on \$12,973.53.....                | \$ 518.94    |
| Surtax on \$13,578.28.....                          | 566.26       |
| <hr/>   |              |
| Total Tax .....                                     | \$ 1,085.20  |
| Less: Income Tax paid at the source.....            | 21.45        |
| <hr/>   |              |
| Correct income tax liability.....                   | \$ 1,063.75  |
| Income tax assessed:                                |              |
| Original, account No. 201141 .....                  | 335.57       |
| <hr/>   |              |
| Deficiency of income tax .....                      | \$ 728.18    |
| <br>[Endorsed]: U. S. B. T. A. Filed Nov. 12, 1941. |              |
| [12]  |              |

---

[Title of Board and Cause.]

## ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income and surtaxes for the calendar year 1939; denies the remainder of the allegations contained in paragraph 3 of the petition.



4. Denies the allegations of error contained in subparagraphs (a), (b), and (c) of paragraph 4 of the petition.

5. (a), (b), and (c) Admits the allegations contained in subparagraphs (a), (b), and (c) of paragraph 5 of the petition.

(d) to (m), inclusive. Denies the allegations contained in subparagraphs (d) to (m), inclusive, of paragraph 5 of the petition. [13]

(n) Admits that the petitioner paid out the sums totaling \$1,655.10, but denies that such sums constitute sundry expenses. Admits that the Commissioner disallowed the items aggregating \$1,655.10 which petitioner had deducted in his 1939 income tax return, denies the remainder of the allegations contained in subparagraph (n) of paragraph 5 of the petition.

(o) Admits that the petitioner received a salary of \$12,000.00 as an official of a corporation, denies the remainder of the allegations contained in subparagraph (o) of paragraph 5 of the petition.

(p) Admits that the petitioner subscribed for and paid \$180.00 during the year 1939 for Babson's Financial Service Reports and that he deducted said sum as an ordinary and necessary expense and that the Commissioner disallowed the said deduction, denies the remainder of the allegations contained in subparagraph (p) of paragraph 5 of the petition.

(q) Admits that the petitioner paid \$10.00 for rental of a safety deposit box and claims said deduction as an ordinary and necessary expense which was

disallowed by the Commissioner, denies the remainder of the allegations contained in subparagraph (q) of paragraph 5 of the petition.

(r) and (s) Denies the allegations contained in subparagraphs (r) and (s) of paragraph 5 of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied. [14]

Wherefore, it is prayed that the determination of the Commissioner be approved.

(Signed) J. P. WENCHEL,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

ALVA C. BAIRD,  
Division Counsel.  
FRANK T. HORNER,  
E. A. TONJES,  
Special Attorneys,  
Bureau of Internal Revenue.

BAT/mm 12/24/41

[Endorsed]: U.S.B.T.A. Filed Dec. 31, 1941. [15]

---

[Title of Tax Court and Cause.]

### AMENDED PETITION

Comes now the petitioner by his counsel, W. E. Baird, and moves the Court that he be allowed to amend his petition with respect to pleading of er-

rors by the addition of another allegation of error 4(d) as stated below.

The allegations of error as amended will then be as follows:

4 (a) Commissioner erred in determining that interest in the amount of \$4,143.01, paid by the petitioner in satisfaction of his obligation arising from being a transferee and/or executor of the Estate of L. K. Green, was not an allowable deduction from gross income.

4(b) Commissioner erred in determining that legal, accounting and sundry other expenses amounting to \$1,655.10, paid by petitioner in connection with various taxes and other business matters, was not an allowable deduction from gross income.

4 (c) Commissioner erred in determining that the expense of Babson's Financial Service Reports, \$180.00, and rental of a safety deposit box, \$10.00, paid by petitioner, was not an allowable [16] deduction from gross income.

4 (d) Commissioner erred in including in gross income of petitioner the amount of \$4,143.01, being a portion of the income received by petitioner arising from property transferred to him as residuary beneficiary of the Estate of L. K. Green.

W. E. BAIRD,

Counsel for Petitioner,  
701 Fidelity Building,  
Kansas City, Missouri.

[Endorsed]: T.C.U.S. Filed Nov. 3, 1942. [17]



[Title of Tax Court and Cause.]

ANSWER TO AMENDED PETITION

Comes now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed in the above-entitled proceeding denies as follows:

4 (a) to (d), inclusive. Denies the allegations of error contained in subparagraphs (a) to (d), inclusive, of paragraph 4 of the amended petition.

Denies generally and specifically each and every allegation set forth in the amended petition not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved.

J. P. WENCHEL,

Chief Counsel, Bureau of Internal Revenue.

Of Counsel:

W. FRANK GIBBS,

Division Counsel.

ANGUS ROY SHANNON, JR.,

Special Attorney,

Bureau of Internal Revenue.

ARS:fmh 12-7-42. [18]

[Title of Tax Court and Cause.]

Docket Nos. 108546, 109145. Promulgated January 19, 1944.

Upon settlement of their father's estate in 1931, the petitioners, as distributees, each received one-half of the residuary estate. Several years later the respondent determined a deficiency in estate tax against the said estate, which with the interest thereon was paid in equal amounts by the petitioners in 1939. Petitioner Ralph J. Green similarly paid in 1939 a deficiency with interest thereon in the estate tax of his deceased wife, he having received in a prior year, as beneficiary of her estate, one-fourth of the assets. Held, that such parts of the interest on the said estate tax deficiencies as accrued from the dates of distribution and were paid by the petitioners in 1939 are deductible from gross income under section 23 (b) of the Revenue Act of 1938 in computing petitioners' net incomes.

During 1939 the petitioners paid legal and accounting fees and sundry expenses in connection with matters of taxation. Held, that the amounts are not legal deductions from gross income. [19]

W. E. Baird, C.P.A., for the petitioners.

Angus R. Shannon, Jr., Esq., for the respondent.

### OPINION

Smith, Judge: These proceedings, which were consolidated for hearing, are for the redetermination of deficiencies in income tax for the year 1939

of \$1,201.94 in the case of Ralph J. Green, and \$728.18 in the case of Lawrence R. Green. In the petition filed by the former, it is alleged that the respondent erred in disallowing the deduction from gross income of (1) \$4,143 interest paid in satisfaction of his obligation, as a transferee, to pay a deficiency in estate tax on the estate of his deceased father, which had been distributed to him and his brother Lawrence in equal shares in 1931; (2) \$245.85 interest paid in satisfaction of his obligation, as transferee, to pay a deficiency in estate tax on the estate of his deceased wife; (3) \$1,679.37 paid "in connection with various taxes and other business matters"; and (4) \$18.37 for rent of a safety deposit box and sundry expenses with respect to securities.

The allegations of error in the petition of Lawrence R. Green are the same as (1), (3) and (4) above, except that the amounts are \$4,143.01, \$1,655.10 and \$190, respectively, the last named item representing \$180 paid for Babson's Financial Service Reports and \$10 rental for a safety deposit box.

By amendments to the petitions, it is claimed that if petitioners are not entitled to deduct interest paid by them upon the deficiency in estate tax on the estate of their father, then they erred in including in gross income for 1939 an amount equal to the interest disallowed as a deduction.

The respondent concedes error as to his disallowance of the deduction of \$18.37, represented by allegation (4) above, in the case of Ralph J. Green, and of \$190 in the case of Lawrence R. Green. [20]

The facts are found as stipulated by the parties, such stipulation of facts being incorporated herein by reference.

The petitioners are brothers. Ralph Green resides in Warrensburg, Missouri. He filed his income tax return for 1939 with the Collector of Internal Revenue for the Sixth Collection District of Missouri. Lawrence Green resides in San Diego, California. He filed his income tax return for 1939 with the Collector of Internal Revenue for the Sixth Collection District of California. Both returns were made on the cash receipts and disbursements basis.

The petitioners' father, L. K. Green, died on July 5, 1930, leaving a will making the petitioners the two and only residuary beneficiaries of his estate. They shared equally in their father's estate. Lawrence Green was duly appointed, qualified and acted as executor. A Federal estate tax return was duly prepared and filed for the estate, and the tax shown to be due thereon was duly paid.

The estate of L. K. Green was probated in Johnson County, Kansas. The final report of the executor was filed on September 4, 1931, showing that all specific bequests had been paid and asking for an order for final distribution to the residuary beneficiaries and discharge of the executor. The final distribution was accomplished, and on October 13, 1931, the executor was discharged and given full and complete release. No assets were retained in the estate.

Subsequent to the final settlement of the estate on October 13, 1931, the respondent determined a deficiency in estate tax against the Estate of L. K. Green. The matter was finally settled by the petitioners paying, in 1939, an estate tax deficiency in the amount of \$17,244.81, together with interest as provided by law in the amount of \$8,286.01. The petitioners [21] each paid one-half of the deficiency and interest thereon, the said interest being computed to July 8, 1939.

Nelle M. Green, wife of Ralph Green, died on November 16, 1935. Ralph Green was beneficiary of his wife's estate and received one-fourth of the assets of the estate upon distribution. A Federal estate tax return was duly prepared and filed for the Estate of Nelle M. Green, and the tax shown to be due thereon was duly paid. On or about March 30, 1937, all of the assets of the estate, with the exception of \$136.27, were distributed by the executor of the said estate. Subsequent to March 30, 1937, the respondent determined a deficiency in estate tax against the Estate of Nelle M. Green. The matter was finally settled by Ralph Green furnishing the funds to pay the deficiency in estate tax in the amount of \$1,714.41, together with interest as provided by law in the amount of \$245.85. The payment of the deficiency and the designated interest was made during the calendar year 1939.

The amounts distributed to and received by the petitioners from the estate of their father, and the amount distributed to and received by Ralph Green from the estate of his deceased wife, were greatly



in excess of the amounts of designated interest paid by each petitioner on the deficiencies in estate tax of the respective estates, and there is no claim, nor is there any suggestion of claim, that the amounts so received by the petitioners from the said estates did not also exceed the tax and the interest so paid.

In their respective income tax returns for 1939, the petitioners each deducted from gross income the amount of \$4,143, designated as interest paid on the estate tax deficiency of their father's estate. In addition, Ralph [22] Green deducted from income \$245.85, designated as interest paid on the estate tax deficiency of his wife's estate. The respondent disallowed these deductions in his determination of the deficiencies herein.

During 1939, Ralph Green received a salary of \$12,000 as an officer of a corporation, and also received interest and dividends from a considerable amount of bonds and stocks owned by him. He was also a partner in a retail store, owned a small amount of oil royalties, and owned an interest in certain real estate located in Canada and in California.

During 1939, Lawrence Green received a salary of \$12,000 as an officer of a corporation, and also some fees as director. One-half of such salary and fees was reported by petitioner and one-half by his wife, Georgia M. Green. He also owned a considerable amount of stocks and bonds, a small amount of oil royalties, and an interest in certain real estate located in Canada and in California.

It was the practice of the petitioners during 1939, and also during prior years, to consult with their accountant or attorney for advice and assistance regarding various matters of taxation.

During 1939, Ralph Green paid the following legal and accounting fees and sundry expenses in connection with matters of taxation: [23]

Baird, Kurtz & Dobson, for services and expenses of  
W. E. Baird:

|  |            |
|--|------------|
| For preparation of Federal and state income tax returns for 1938 .....   | \$ 70.00   |
| Portion of expenses in connection with trip to California in connection with preparation of income tax returns for 1938 .....  | 5.00       |
| One-half of fee for settling estate tax matters re estate of L. K. Green .....   | 280.00     |
| One-half of expenses of trip to Wichita, Kansas, for conference regarding estate and income tax matters re estate of L. K. Green and individual income tax matters ..... | 7.60       |
| Fee for gift tax settlement and sundry other minor accounting and tax matters .....  | 40.00      |
| A. Z. Patterson—legal fees and expenses with respect to various tax matters .....  | 1,212.25   |
| One-half traveling expenses from California to Kansas City regarding various tax matters.....  | 62.50      |
| Expense shipping securities .....  | 2.02       |
|  | <hr/>      |
|  | \$1,679.37 |

The respondent disallowed all of the foregoing items, aggregating \$1,679.37, which Ralph Green had deducted in his 1939 income tax return.

During 1939, Lawrence Green paid the following legal and accounting fees and sundry expenses in connection with matters of taxation: [24]

Baird, Kurtz & Dobson, for services and expenses of  
W. E. Baird:

|   |            |
|---|------------|
| For preparation of individual income tax returns<br>for 1938 .....  | \$ 60.00   |
| Portion of expenses in connection with trip to Cali-<br>fornia for preparation of various income tax re-<br>turns for 1938 .....  | 5.00       |
| One-half of fee for settling L. K. Green estate mat-<br>ters .....  | 286.00     |
| One-half of expenses of trip to Wichita, Kansas, re-<br>garding L. K. Green estate tax matters, L. K.<br>Green income tax matters, and individual income<br>tax matters ..... | 7.60       |
| Fee for gift tax settlement and sundry other minor<br>matters .....   | 40.00      |
| A. Z. Patterson: legal fees and expenses.....   | 1,200.00   |
| One-half traveling expenses from California to Kansas<br>City regarding various tax matters.....  | 62.50      |
|   | <hr/>      |
|   | \$1,655.10 |

The respondent disallowed all of the foregoing items, aggregating \$1,655.10, which Lawrence Green had deducted in his 1939 income tax return.

The first question presented is whether that part of the amount paid by petitioners as transferees of their father's estate, and by Ralph Green as transferee of his wife's estate, which represented interest on the estate tax deficiencies of those estates was to the petitioners interest, deductible under section 23 (b) of the Internal Revenue Code for the purpose of computing their net income. [25]

The petitioners were the residuary legatees of the estate of their father and as such legatees had, prior to 1939, received distribution of the residuary estate equally between them. Ralph Green had in a prior



year, and as beneficiary, received one-fourth of the assets of the estate of his wife. After such distribution the estate had assets of only \$136.27. Accordingly, the petitioners were transferees of the respective estates and in making payment of the estate tax deficiencies and the interest thereon they were responding to their liability for the estate tax and interest of the estate of their father and, in the case of Ralph Green, of his wife also.

Section 900 (a) of the Internal Revenue Code provides in part as follows:

Sec. 900. Transferred Assets.

(a) *Method of Collection.*—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this subchapter (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees.*—The liability, at law or in equity, of a transferee of property of a decedent, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed by this subchapter.

Section 23 I.R.C. provides for the deduction from gross income of “(b) *Interest.*—All interest paid or accrued within the taxable year on indebtedness.”

The question here is whether the entire amount or any part of the interest paid by the petitioners upon the deficiencies in estate tax was paid on indebtedness.

The law is well established that in order for interest to be deductible from gross income it must be paid upon a debt owed by the payor. See William H. Simon, 36 B.T.A. 184, and cases therein cited. In *Scripps v. Commissioner* (C.C.A., 6th Cir.), 96 Fed. (2d) 492; 21 A.F.T.R. 130, the [26] question before the court was whether a trust estate which had been created by the decedent prior to his death, and which was charged with the payment of the estate tax, was entitled to deduct from its gross income the estate tax and interest paid thereon. The Board held, 33 B.T.A. 963, that the estate tax paid was not deductible. The United States Circuit Court sustained the Board in holding that the estate tax paid could not be deducted but held that the interest paid thereon could be deducted. The court held:

\* \* \* Section 23 (b) provides that in computing net income there shall be allowed as deductions all interest paid or accrued within the taxable year on indebtedness. There is here no express limitation upon the character of the taxable entity claiming the deduction. It is true, of course, that there is an implied limitation, and that the indebtedness must be the taxpayer's indebtedness, not that of someone else. But we have no difficulty in concluding that the interest paid by the trust was interest upon its

indebtedness, and this without regard to whether its obligation was a primary or a secondary obligation. The liability was specifically imposed upon it by the taxing law, and its property was subject to government lien. Section 315 (a) (b), 44 Stat. 80. Had it borrowed the money with which to pay the tax there would then have been no question of its right to deduct interest upon the indebtedness. We see no question of that right in the present situation. \* \* \*

Consonant therewith see *Penrose v. United States*, 18 Fed. Supp. 413.

The respondent in making his argument herein relies principally upon *Helen B. Sulzberger*, 33 B.T.A. 1093; *Inez H. Brown*, 1 T.C. 225; and *Jones v. Hassett*, 45 Fed. Supp. 195.

It is true, of course, that a person paying interest upon the indebtedness of another as a volunteer is not entitled to deduct from his gross income the interest paid. He is not paying interest upon his own indebtedness.

Those are not the facts here. The petitioners as transferees of the decedents' estates had a liability for the payment of the deficiencies in [27] estate tax together with interest thereon. A man who has a liability for a debt and pays it is in the same position as the principal debtor. When he pays interest which is accrued upon the debt from the time that he steps into the shoes of the principal debtor he is paying interest upon his own debt. An estate

in process of administration is entitled to deduct from the gross income of the estate the interest paid upon the estate tax. I.T. 1317; C.B. I-1; p. 132.

Any doubt relative to the right of a transferee to deduct the portion of the interest paid by him upon a deficiency in a tax imposed by the transferor appears to be dispelled by a consideration of the legislative history which led to the enactment of section 280 and section 316 (a) of the Revenue Act of 1926. These provisions of the 1926 law provided for the assessment and collection of taxes and deficiencies in tax due from transferees. In the Senate Finance Committee Report (69th Cong., 1st Sess., S. Rept. 52), it was said:

The liability which arises in the transferee in respect of the receipt of the assets is normally to be measured by the liability of the transferor at the time of the transfer. This would include the amount of the tax due plus all interest, additional amounts, and additions to the tax provided by law, up to the time of such transfer. The section, however, provides that the liability of the transferee in this amount shall not in turn be subject to interest, additional amounts, or additions to tax, save that in case the transferee petitions the board for a re-determination of its liability, the amount so determined shall draw interest at the rate of 1 per centum a month commencing with notice and demand for payment following final decision of the board.



The law as drafted by the Senate Finance Committee was changed in conference to provide the same as section 900 I.R.C. The Conference Committee Report (69th Cong., 1st Sess., H. Rept., 356), states: [28]

Under the amendment the liability of the taxpayer for the tax, including all interest and penalties, is fixed as of the time of the transfer of the assets. No further interest subsequently accrues upon such liability as assumed by the transferee except the interest under section 276 (b) and (c) for failure to pay upon notice and demand after the outlined procedure has been completed and interest at 6 percent a year for reimbursing the Government at the usual rate for loss of the use of money due it. \* \* \*

From the foregoing we think it clear that the petitioners are not entitled to deduct such portions of the interest which accrued upon taxes of the estates of the decedents prior to distribution. That interest accrued upon an indebtedness of the estates. The petitioners received the distributions from the estates subject to a charge for interest accrued to the dates of transfer. We think it equally clear that the interest which accrued upon the estate tax deficiencies after distribution of the estates accrued upon indebtedness of the petitioners. They are entitled to deduct from their gross incomes the amount of such interest paid by them on the estate tax deficiencies of the two estates. The rule herein announced is consonant with that enunciated in *Harvey M. Toy*, 34 B.T.A. 877.

To the extent that the opinion of the Board in *Helen B. Sulzberger*, *supra*, denies a distributee of the assets of an estate the right to deduct the interest which accrues upon a tax deficiency of the estate from the date of distribution, and which he pays in satisfaction of his personal liability, it will not be followed hereafter. [29]

The second question presented is whether the petitioners are entitled to deduct from gross income certain legal and accounting fees and sundry expenses in connection with matters of taxation. The petitioners submit that a corporation paying such expenses would be entitled to deduct them and that no distinction in this regard should be made between a corporation and an individual.

Section 23(a) of the Revenue Act of 1938 has been amended by section 121 of the Revenue Act of 1942 to permit the deduction from gross income of:

(1) Trade or Business Expenses.

(A) In General.—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business \* \* \*.

\* \* \* \* \*

(2) Non-Trade or Non-Business Expenses.—

In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for the production of income.

Quite clearly the expenses here in question were not paid or incurred in connection with the carrying on of a trade or business. If deductible from gross income, they must be deducted under "Non-Trade or Non-Business Expenses," provided for by subsection (2) of section 23 (a), as amended. [30]

It should be noted that the deduction of non-trade or non-business expenses is held within certain definite limits. To be deductible, they must be (1) "ordinary and necessary"; (2) "for the production or collection of income"; or (3) "for the management, conservation, or maintenance of property held for the production of income." We do not think that the expenditures which the petitioners claim as deductions from gross income fall within classification (2) or (3). The respondent has interpreted this new provision of the Revenue Act of 1942, which admittedly applies to the petitioners for the taxable year 1939, by Treasury Decision 5196, promulgated December 8, 1942, wherein it is stated:

\* \* \* Expenditures incurred in protecting or asserting one's rights to property of a decedent as heir or legatee, or as beneficiary under a testamentary trust, are not deductible expenses. Expenditures incurred for the purpose of preparing tax returns (except to the extent such returns relate to taxes on property held for the production of income), for the purpose of recovering taxes (other than recoveries required to be included in income), or for the purpose of *resiting* a proposed additional assessment of taxes (other than taxes on property held for the

production of income) are not deductible expenses under this section, except that part thereof which the taxpayer clearly shows to be properly allocable to the recovery of interest required to be included in income.

The respondent's disallowance as deductions of \$1,679.37 of expenses described above in the case of petitioner Ralph J. Green and of \$1,655.10 in the case of petitioner Lawrence R. Green is accordingly sustained.

Reviewed by the Court.

Decisions will be entered under Rule 50. [31]

Turner, J., dissenting: That portion of the majority opinion allowing the petitioners to deduct that part of the liability of their father's estate, and in the case of Ralph Green, of his wife's estate, which represents interest accrued on the estate tax deficiencies of the said estates from and after the dates the assets thereof were distributed to them as beneficiaries is in my opinion contrary to the law and the facts, and for that reason I note my dissent. The petitioners were the residuary legatees of the estate of their father and as such legatees had received distribution of the residuary estate equally between them. Ralph Green was a beneficiary of his wife's estate and as such beneficiary had received one-fourth of the assets of her estate. Accordingly the petitioners were transferees of the respective estates, and in making payment of the estate tax deficiencies and interest thereon, they were responding to their liability in equity for the estate tax and



interest of the said estates. Section 900 (a) (1) of the Internal Revenue Code. The property so received from the said estates was received without cost or charge, and there is no claim or suggestion that it was not sufficient in each instance to cover the amount of the tax and the interest thereafter paid. It came to them charged not only with liability for the deficiencies in tax, but for interest collectible "as a part of the tax," at the rate of 6 per cent per annum from the due date of the tax to the date of assessment of the deficiency. Section 891 of the Internal Revenue Code. I have been able to find no provision of statute and know of no rule whereunder or whereby an estate may stop the running of interest against it and on its tax by distribution of its assets, and there [32] is no basis here for any claim that interest other than that imposed by section 891, *supra*, was charged or paid. There was no charge of interest *qua* interest against the petitioners, and to the extent of the tax and interest paid they were merely accounting to the Federal Government, creditor of the two estates, for property received under mistake of fact as their own. Through the property received the petitioners had already been secured or indemnified for the full liability they were required to pay and were actually out of pocket nothing, the net amount of their bequests merely having been fixed by the said payments. They have made no payment of interest *qua* interest, and their claim for the deduction of interest should in my opinion be denied. Helen B. Sulzberger, 33 B. T. A. 1093, and Inez H. Brown, 1 T.

Ĉ. 225. See and compare William H. Simon, 36 B. T. A. 184; Charles R. Holden, 27 B. T. A., 530; and Jones v. Hassett, 45 Fed. Supp. 195. For a more extended discussion of my views concerning the equity liability of transferees and the nature or character of payments made thereunder, and for comment on the Congressional Committee Reports cited and relied on in the majority opinion, reference is made to my dissent in Koppers Co., 3 T. C. . . . . (promulgated this date).

In stating that the rule announced in the instant case is consonant with that enunciated in Harvey M. Toy, 34 B. T. A. 877, the majority has ignored the distinction specifically drawn in the Toy case between the case there decided and a case such as we have here. The liability asserted and paid and in respect of which deduction was claimed in the Toy case was directly imposed by statute, section 3467 of the Revised Statutes, and bottomed solely on the wrongful act of the party charged, while here the [33] liability is a liability to respond in trust as a transferee or distributee of property, not for a liability of the transferee, but for a liability of the transferor. In my own mind there is grave doubt as to the soundness of the conclusion reached in the Toy case and that it may properly be said that any part of an amount paid under section 3467, *supra*, constituted the payment of interest. Certainly a very persuasive argument can be made that the liability paid was in the nature of a penalty for the wrongful act of a fiduciary in making distribution of a

trust estate before satisfying the liability of the estate to the Government for tax and interest, and that such tax and interest is merely the measure of the penalty imposed and not as to the fiduciary tax and interest. Regardless, however, of the soundness of the *Toy* case, it does not decide or stand for the proposition decided in the instant case.

Similarly, *Scripps v. Commissioner*, 96 Fed. (2d) 492, and *Penrose v. United States*, 18 Fed. Supp. 413, do not stand for the proposition here decided, but if in point at all, are in part, at least, directly contrary. Under the rule enunciated in the *Penrose* case, the petitioners are entitled to deduct as their interest the entire amount of interest charged and paid on the estate tax deficiencies and are not limited to interest accrued before the distribution of the assets of the estates, as the majority here holds. The *Scripps* case, if in point at all, is also authority for the deduction of the interest in full. It is to be noted also that the estate tax and interest were paid by an inter vivos trust, created prior to the death of the decedent, and that the liability was statutory and not a liability in equity. [34]

In the case of *Ralph Green*, it would seem that only a part of the interest deduction claimed should be allowed, even under the theory of the majority opinion. The facts show that as beneficiary of his wife's estate he was entitled to receive and did actually so receive only one-fourth of the assets. There is no showing that he was ever charged with any amount as transferee, the recitation in the report being that a deficiency was determined against the

estate of Nelle M. Green and "the matter was finally settled by Ralph Green furnishing the funds" to pay the deficiency and interest. The majority opinion allows him to deduct as his interest the full amount of the interest which accrued on the estate tax from and after the date he, as beneficiary of the estate, received one-fourth of its assets. His ultimate liability to pay the amount of such interest was only one-fourth thereof. Such being the facts, it would seem to me that as to the other three-fourths it must necessarily be concluded that the payment was a voluntary payment of the interest of another, for which no deduction is allowable. *Colston v. Burnet*, 59 Fed. (2d) 867, and *William H. Simon*, *supra*.

Kern, J., agrees with this dissent. [35]

Disney, J., dissenting: I can not agree with the view expressed in the majority opinion. There being no personal liability upon the taxpayer for the tax involved, I do not think that section 23 (b) of the Internal Revenue Code encompasses the deduction approved by the majority. My views are more fully expressed in my dissent in *Koppers Company*, 2 T. C. ....(promulgated this date), and reference is made to the decision of the Circuit Court of Appeals for the Tenth Circuit on November 8, 1943, in *Koch et al, v. United States*, Fed. (2d) ....., denying the deduction under facts essentially the same in principle as those here involved. I therefore respectfully dissent.

Black and Kern, J. J., agree with this dissent.

[36]



The Tax Court of the United States  
Washington

Docket No. 109145

LAWRENCE R. GREEN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the Court's Opinion, promulgated January 19, 1944, the parties herein having filed an agreed recomputation of tax on February 12, 1944, it is

Ordered and Decided: That there is a deficiency in income tax of \$177.48 for the calendar year 1939.

Enter.

(Signed) CHARLES P. SMITH  
Judge.

Entered Feb. 16, 1944 [37]

---

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed, by counsel for the respective parties in the above-entitled proceedings that said proceedings may be consolidated for the purpose of trial and opinion. It is further stipulated and agreed that the following facts are to be taken as true, subject to the right of either party



to introduce further evidence and testimony not inconsistent with the facts herein stipulated:

1. Petitioners are individuals and native-born citizens of the United States. Petitioner Ralph J. Green, Docket No. 108546, resides at Warrensburg, Missouri, and filed his individual Federal income tax return for the calendar year 1939 with the collector of internal revenue for the Sixth District of Missouri at Kansas City, Missouri. Petitioner Lawrence R. Green, Docket No. 109145, resides at 2440 Pine Street, San Diego, California, and filed his individual Federal income tax return for the calendar year 1939 with the collector of internal revenue for the Sixth District of California. Both of the above returns were made and filed on the cash receipts and disbursements basis. [38] During 1939 petitioners were under no statutory disability to prevent their entering into and carrying on any business of a legal nature.

2. One L. K. Green, deceased, father of the petitioners herein, died July 5, 1930, leaving a will making petitioners the two and only residuary beneficiaries of his estate. The two brothers shared equally in their father's estate. Petitioner Lawrence R. Green was duly appointed, qualified, and acted as executor of the L. K. Green Estate. A Federal estate tax return for the estate of L. K. Green was duly prepared and filed, and the tax shown thereon was paid.

3. The estate of L. K. Green was probated in Johnson County, Kansas. Final report of executor was filed as of September 4, 1931, showing all spe-

cific bequests having been paid and asking for order for final distribution to residuary beneficiaries and discharge of executor. The final distribution was accomplished, and on October 13, 1931, the executor of the estate of L. K. Green was discharged and given full and complete release. No assets were retained in the estate.

4. Subsequent to the final settlement of the estate of L. K. Green on October 13, 1931, in the Probate Court of Johnson County, Kansas, the Commissioner of Internal Revenue asserted a deficiency in tax against said estate. The matter was finally settled by the residuary legatees of the estate (petitioners herein) paying an estate tax deficiency in the amount of \$17,244.81 plus interest as provided by law in the amount of \$8,286.01. Petitioners each paid one half of [39] the asserted deficiency and interest thereon during the calendar year 1939. The interest was computed to July 8, 1939. The above deficiency as finally agreed upon was considerably less than that originally determined by the Commissioner.

5. One Nelle M. Green, deceased, wife of petitioner Ralph J. Green, died November 16, 1935. Petitioner Ralph J. Green was a beneficiary of the estate of Nelle M. Green and received one fourth of the assets of the estate upon distribution. The estate of Nelle M. Green was probated in Jackson County, Missouri. A Federal estate tax return for the estate of Nelle M. Green was duly prepared and filed and the tax shown thereon was paid. On or

about March 30, 1937, all of the assets of the estate, with the exception of \$136.27, were distributed by the executor of the estate. On or about May 6, 1940, final settlement of the estate was made in the probate court and the executor was discharged and given full and complete release.

6. In their respective income tax returns filed for the calendar year 1939, petitioners each deducted from income the amount of \$4,143.00, designated as interest paid on the deficiency in estate tax of the estate of L. K. Green, heretofore mentioned in paragraph 4 hereof. In addition, petitioner Ralph J. Green deducted from income the amount of \$245.85, designated as interest paid on the deficiency in estate tax of the estate of Nelle M. Green heretofore mentioned in paragraph 5 hereof. The Commissioner disallowed the deductions as claimed.

7. The amounts distributed to and received by petitioners, Ralph J. Green and Lawrence R. Green, from the estate of L. K. Green, and [40] the amount distributed and received by Lawrence R. Green from the estate of Nelle M. Green, were greatly in excess of the amounts of designated interest paid by each petitioner on the deficiencies in estate tax of the above estates.

8. The gross income received by each petitioner for the year 1939 from properties received from the estate of L. K. Green or substitutions therefor was greatly in excess of the amount of designated interest paid by each with respect to the estate tax deficiency. The dividends received by each petitioner in 1939 from the capital stock of one corporation,

which was received by petitioners from their father's estate and was continuously held by him through 1939, was almost double the amounts of designated interest paid with respect to estate tax deficiency.

9. For 1939, petitioner Ralph J. Green received a salary of \$12,000.00 as an officer of a corporation. Petitioner Ralph J. Green also owned a considerable amount of stocks and bonds. He was also a partner in a retail store. He owned a small amount of oil royalties. He owned an interest in real estate in Canada and also owned and operated an interest in real estate in California. Petitioner Ralph J. Green's gross income for 1939 from such other sources, exclusive of salary and exempt or partially exempt interest, was \$32,463.20.

10. For the year 1939, petitioner Lawrence R. Green received a salary of \$12,000.00 as an official of a corporation and also received some director's fees. One half of such salary and fees was reported by petitioner and one half by his wife, Mrs. Georgia M. Green. Petitioner [41] Lawrence R. Green also owned a considerable amount of stocks and bonds. He owned a small amount of oil royalties. He owned an interest in real estate in Canada, and also owned and operated an interest in real estate in California. Petitioner Lawrence R. Green's gross income for 1939, exclusive of salary and exempt or partially exempt interest, was \$24,823.28.

11. It was the practice of petitioners during the year 1939 and also during prior years to refer to their accountant or attorney for advice and assistance regarding various matters of taxation.



12. During 1939 petitioner Ralph J. Green paid the following legal and accounting fees and sundry expenses in connection with matters of taxation:

Baird, Kurtz & Dobson, for services and expenses of  
W. E. Baird:

|  |                   |
|--|-------------------|
| For preparation of Federal and state income tax returns for 1938 .....   | \$ 70.00          |
| Portion of expenses in connection with trip to California in connection with preparation of income tax returns for 1938 .....  | 5.00              |
| One half of fee for settling estate tax matters re estate of L. K. Green.....  | 280.00            |
| One half of expenses of trip to Wichita, Kansas, for conference regarding estate and income tax matters re estate of L. K. Green and individual income tax matters ..... | 7.60              |
| Fee for gift tax settlement and sundry other minor accounting and tax matters .....  | 40.00             |
| A. Z. Patterson, legal fees and expenses with respect to various matters .....   | 1,212.25          |
| One-half traveling expenses from California to Kansas City regarding various tax matters.....  | 62.50             |
| Expense shipping securities .....  | 2.02              |
| Total legal and accounting fees and expenses.....  | <u>\$1,679.37</u> |

[42]

The Commissioner disallowed the foregoing items aggregating \$1,679.37, which petitioner Ralph J. Green had deducted in his 1939 income tax return.

13. During 1939 petitioner Lawrence R. Green paid the following legal and accounting fees and sundry expenses in connection with matters of taxation:

Baird, Kurtz & Dobson, for services and expenses of  
W. E. Baird:

|   |          |
|---|----------|
| For preparation of individual income tax returns for 1938 ..... | \$ 60.00 |
|---|----------|



|  |            |
|--|------------|
| Portion of expenses in connection with trip to California for preparation of various income tax returns for 1938 .....   | 5.00       |
| One half of fee for settling L. K. Green estate matters .....  | 280.00     |
| One half of expenses of trip to Wichita, Kansas, regarding L. K. Green estate tax matters, L. K. Green income tax matters, and individual income tax matters ..... | 7.60       |
| Fee for gift tax settlement and sundry other minor matters .....   | 40.00      |
| A. Z. Patterson, legal fees and expenses .....   | 1,200.00   |
| One half traveling expenses from California to Kansas City regarding various tax matters .....   | 62.50      |
|  | <hr/>      |
|  | \$1,655.10 |
|  | <hr/>      |

The Commissioner disallowed the foregoing items aggregating \$1,655.10, which petitioner Lawrence R. Green had deducted in his 1939 income tax return.

14. Respondent concedes error as alleged in subparagraph (d) of paragraph 4 of the petition in Docket 108546 and as alleged in subparagraph (c) of paragraph 4 of the petition in Docket No. 109145.

W. E. BAIRD

Counsel for Petitioner.

(Signed) J. P. WENCHEL (WFG)

Chief Counsel,

Bureau of Internal Revenue.

[Endorsed]: T. C. U. S. Filed Nov. 3, 1942.

[43]

[Title of Tax Court and Cause.]

JOINT MOTION TO AMEND STIPULATION  
OF FACTS

Come now the parties in the above-entitled proceedings and move for leave to amend the stipulation of facts heretofore filed by adding the following as paragraph 5 (a) thereto and making it a part thereof:

5 (a). Subsequent to March 30, 1937, the Commissioner asserted a deficiency in estate tax against the estate of Nelle M. Green. The matter was finally settled by petitioner Ralph J. Green furnishing the funds to pay a deficiency in estate tax of said estate in the amount of \$1,714.41 plus interest as provided by law in the amount of \$245.85. The payment of deficiency and designated interest was made during the calendar year 1939.

And for cause show that the above paragraph was inadvertently omitted in the preparation of the stipulation of facts finally agreed upon by the parties.

Wherefore, it is prayed that this motion be granted.

(Sgd) W. E. BAIRD

Counsel for Petitioners.

(Signed) J. P. WENCHEL (WFG)

Chief Counsel,

Bureau of Internal Revenue.

The Tax Court of the U. S. Granted Dec. 11, 1942.

(Signed) CHARLES P. SMITH

Judge.

[Endorsed]: T.C.U.S. Filed Dec. 11, 1942. [44]

JOINT EXHIBIT No. 2

Form 1040  
Treasury Department  
Internal Revenue Service

United States

Page 1

INDIVIDUAL INCOME TAX RETURN—1939

For Net Incomes of More Than \$5,000 From Salaries,  
Wages, Dividends, Interest, Annuities, and for In-  
comes from Other Sources Regardless of Amounts.

(Do not use these spaces)

(Auditor's Stamp)  
..... OT

File Code 1117

Serial No. 201141

For Calendar Year 1939

District 6-Calif.

Assessment  
2720

Tax .....\$79.91

Penalty .....

Interest .....\$ 7.24

Total .....\$87.15

Basis OA or RAR.....

Audited by Rev. Agt 19....

Unit No. It Ap 7

List Sept 19 41

or fiscal year beginning....., 1939, and ended....., 1940

To be filed with the Collector of Internal Revenue for your  
district not later than the 15th day of the third month  
following the close of your taxable year.

Print Name and Address Plainly. (See Instruction C)

Lawrence R. Green

(Name) (Use given names of both husband and wife, if this  
is a joint return)

Page..... Line.....

Sept 19 519027

[Stamped] : Illegible

(Cashier's Stamp)

Received

With Remittance

Mar 14 1940

Coll. Int. Rev.

Cash Check M.O.

First Payment

\$83.90

vs. Lawrence R. Green

47

## Joint Exhibit No. 2—(Continued)

| Form 1040—(Cont'd)   | Individual Income Tax Return—1939—(Cont'd) | Page 1—(Cont'd)             |
|--|--|-----------------------------|
| Item and<br>Instruction No.  |  |                             |
|  | INCOME                                     |                             |
| 1. Salaries and other compensation for personal services. (From<br>Schedule A) .....   | \$ 6,047.50                                | [Pencilled<br>in margin]: 8 |
| 2. Dividends .....   | 17,956.20                                  | 4                           |
| 3. Interest on bank deposits, notes, mortgages, etc.....   | 680.03                                     | 4                           |
| 4. Interest on corporation bonds.....  | 4,356.25                                   | 2                           |
| 5. Taxable interest on Government obligations, etc. (From Schedule B)  | .....                                      | 6                           |
| 6. Income (or loss) from partnerships, syndicates, pools, etc. (other than<br>capital gains or losses).....<br>(Furnish names and addresses) | .....                                      | 4                           |
| 7. Income from fiduciaries. (Furnish names and addresses) :  | .....                                      | —                           |
| 8. Rents and royalties. (From Schedule C) .....  | .....                                      | 6                           |
| 9. Income (or loss) from business or profession. (From Schedule D).....  | 290.60                                     | 1                           |
| 10. (a) Net short-term gain from sale or exchange of capital assets. (From<br>Schedule F) .....  | .....                                      | 4                           |
| (b) Net long-term gain (or loss) from sale or exchange of capital<br>assets. (From Schedule E) .....   | 494.65                                     |                             |
| (c) Net gain (or loss) from sale or exchange of property other than<br>capital assets. (From Schedule G) .....                               | 260.00                                     |                             |

# Joint Exhibit No. 2—(Continued)

Form 1040—(Cont'd)

Individual Income Tax Return—1939—(Cont'd)

Page 1—(Cont'd)

Item and  
Instruction No.

## INCOME—(Continued)

|   |               |
|---|---------------|
| 11. Other income (including income from annuities) (State nature).....              | 785.55        |
| 12. Total income in items 1 to 11. (Enter nontaxable income in<br>Schedule I) ..... | \$ 30,870.78✓ |

## DEDUCTIONS

|   |              |
|---|--------------|
| 13. Contributions paid. (Explain in Schedule H).....  | \$ 125.00    |
| 14. Interest. (Explain in Schedule H) .....   | 20,613.69    |
| 15. Taxes. (Explain in Schedule H) .....  | 1,603.93     |
| 16. Losses from fire, storm, shipwreck, or other casualty, or theft. (Ex-<br>plain in Schedule H) ..... | .....        |
| 17. Bad debts. (Explain in Schedule H).....   | .....        |
| 18. Other deductions authorized by law. (Explain in Schedule H).....                                    | 1,851.87     |
| 19. Total deductions in items 13 to 18.....   | 24,194.49✓   |
| 20. Net income (item 12 minus item 19).....   | \$ 6,676.29✓ |

[Stamped on face of form]: Revenue Agent in Charge Received Jul 3 1940 Los Angeles Division.  
 [Stamped on face of form]: Revenue Agent in Charge Received Jun 28 1941 Los Angeles Division.  
 [Stamped on face of form]: Revenue Agent in Charge Received Sept 24 1941 Los Angeles Division.



## Joint Exhibit No. 2—(Continued)

Form 1040—(Cont'd)

Individual Income Tax Return—1939—(Cont'd)

Page 1—(Cont'd)

## COMPUTATION OF TAX

| Item and<br>Instruction No.   | Item and<br>Instruction No. |             |
|---|-----------------------------|-------------|
| 21. Net income (item 20 above).....   | \$6,676.29✓                 |             |
| 22. Less: Personal exemption,<br>(From Schedule J-1) \$.....  |                             |             |
| 23. Credit for dependents.<br>(From Schedule J-2) .....   |                             | 113.81✓     |
| 24. Balance (surtax net income) .....   | \$6,676.29✓                 |             |
| 25. Less: Interest on Govern-<br>ment obligations, etc.<br>(See Instruction 25).. \$.....                         |                             |             |
| 26. Earned income credit.<br>(From Schedule K-1<br>or K-2) .....  | 604.75                      | 21.10✓      |
| 27. Balance subject to normal tax .....   | \$6,071.54✓                 |             |
| 28. Normal tax (4% of item 27).....   |                             | \$ 242.86✓  |
| 29. Surtax on item 24. (See In-<br>struction 29) .....  |                             |             |
| 30. Total (item 28 plus item 29).....   |                             | \$ 356.67✓  |
| 31. Total tax (item 30, or if you had a net<br>long-term capital gain or loss, enter<br>line 16, Schedule F)..... |                             | \$ .....    |
| 32. Less: Income tax paid at<br>source .....  | \$21.10                     | ✓           |
| 33. Income tax paid to a for-<br>eign country of U. S.<br>possession. (Attach<br>Form 1116) .....                 |                             | 21.10✓      |
| 34. Balance of tax (item 31 minus<br>items 32 and 33) .....   |                             | *\$ 355.57✓ |

\* Figures circled in pencil.

Note.—One form marked "Duplicate Copy" must be filed with this original return (\$5 will be assessed if duplicate copy is not filed.) [45]

Joint Exhibit No. 2—(Continued)

Form 1040—(Cont'd)

Individual Income Tax Return—1939—(Cont'd)

Page 2

Schedule A.—INCOME RECEIVED FROM OTHERS CONSISTING OF SALARIES, WAGES, FEES,  
AND OTHER COMPENSATION FOR PERSONAL SERVICES. (See Instruction 1)

[Followed by printed form not filled in]

Schedule B.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction G)

[Followed by printed form not filled in]

Schedule C.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 8)

[Followed by printed form not filled in]

Schedule D.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 9)

[Followed by printed form not filled in]

Schedule E.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED  
IN SCHEDULES C, D, F, AND G

[Followed by printed form not filled in] [46]

Page 3

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS.

(See Instruction 10)

[Followed by printed form not filled in]

## Joint Exhibit No. 2—(Continued)

Form 1040—(Cont'd)

Individual Income Tax Return—1939—(Cont'd)

Page 3—(Cont'd)

## SUMMARY OF CAPITAL NET GAINS OR LOSSES

[Followed by printed form not filled in]

## COMPUTATION OF ALTERNATIVE TAX

(To be used only in the case of a net long-term capital gain or loss)

|  |             |  |                 |
|--|-------------|--|-----------------|
| 1. Net income (item 20, page 1). (See Instruction 10) .....  | \$6,676.29✓ | 7. Less: Interest on Government obligations, etc. (See Instruction 25) ..... | \$ .....        |
| 2. (a) Net long-term capital gain (item 10 (b), page 1) .....  | 260.00      | 8. Earned income credit. (From Schedule K-1 or K-2) (See Inst. 10) .....     | 604.75✓ 604.75✓ |
| (b) Net long-term capital loss (item 10 (b), page 1) .....   | .....       |  |                 |
| 3. Ordinary net income (line 1 minus line 2 (a) or line 1 plus line 2 (b)). (See Instruction 10) ..... | \$6,416.29✓ | 9. Balance subject to normal tax .....                                       | \$5,811.54✓     |
| 4. Less: Personal exemption. (From Schedule J-1) ....\$ .....  |             | 10. Normal tax (4% of line 9) .....  | \$232.46✓       |
| 5. Credit for dependents. (From Schedule J-2) .....  |             | 11. Surtax on line 6. (See Instruction 29) .....                             | 100.81          |
|  |             | 12. Partial tax (line 10 plus line 11) .....                                 | \$333.27✓       |
|  |             | 13. (a) 30% of net long-term capital gain (30% of line 2 (a)) .....          | 78.00✓          |
| 6. Balance (surtax net income) .....   | \$6,416.29✓ |  |                 |

# Joint Exhibit No. 2—(Continued)

Form 1040—(Cont'd)

Individual Income Tax Return—1939—(Cont'd)

Page 3—(Cont'd)

## Computation of Alternative Tax—(Continued)

13. (Continued)

(b) 30% of net long-term capital loss  
(30% of line 2 (b)).....

16. Tax liability (if a net long-term capital gain, on line 2 (a), enter line 14 or line 15, whichever is the lesser; if a net long-term capital loss, on line 2 (b), enter line 14 or line 15, whichever is the greater). (Enter as item 31, page 1) .....

14. Alternative tax (line 12 plus line 13  
(a) or line 12 minus line 13 (b)).....

15. Total normal tax and surtax  
(item 30, page 1).....

## Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS (See Instruction 10)

[Followed by printed form not filled in] [47]

Page 4

## Schedule H.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 13, 14, 15, 16, 17, AND 18

[Followed by printed form not filled in]

## Joint Exhibit No. 2—(Continued)

Form 1040—(Cont'd)

Individual Income Tax Return—1939—(Cont'd)

Page 4—(Cont'd)

Schedule I.—NONTAXABLE INCOME OTHER THAN INTEREST REPORTED IN SCHEDULE B.  
(See Instruction G)

[Followed by printed form not filled in]

Schedule J.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 22 AND 23.  
(See Instructions 22 and 23)

[Followed by printed form not filled in]

## Schedule K.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 26)

(1) If your net income is \$3,000 or less, use only this part of schedule

(2) If your net income is more than \$3,000, use only this part of schedule

|   |   |            |
|---|---|------------|
| Net income (item 20, page 1).....\$.....              | Earned net income (not more than \$14,000) .....  | \$6,047.50 |
| Earned income credit (10% of net income, above) ..... | Net income (item 20, page 1).....   | 6,676.29   |
|   | Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300)..... | 604.75✓    |



# QUESTIONS

1. State your principal occupation or profession:  
Pres. West Missouri Power Co. & Investor.
2. Check whether you are a citizen (X) or a resident alien ( ).
3. If you filed a return for the preceding year, to which Collector's office was it sent? Los Angeles, Calif.
4. Are items of income or deductions of both husband and wife included in this return? No.
5. State (a) Name of husband or wife, if separate return was made: Mrs. Georgia M. Green.

- (b) Personal exemption, if any, claimed thereon: \$2,500.00
- (c) Collector's office to which it was sent: Los Angeles, Cal.
6. Check whether this return was prepared on the cash (X) or accrual ( ) basis.
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501? (Answer "yes" or "no") No. (If answer is "yes," attach statement required by Instruction J.)

## Joint Exhibit No. 2—(Continued)

Form 1040—(Cont'd)

Individual Income Tax Return—1939—(Cont'd)

Page 4—(Cont'd)

## AFFIDAVIT. (See Instruction E)

I/we swear (or affirm) that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code, as amended, and the regulations issued under authority thereof.

Subscribed and sworn to by Lawrence R. Green  
before me this 12th day of Mar., 1940.

LAWRENCE R. GREEN  
(Signature) (See Instruction E)

(Seal)

L. H. VAELTZIE

Notary Public

(Signature and title of officer administering oath)

-----  
(Signature)

(If this is a joint return (not made by agent), it must be signed by both husband and wife. It must be sworn to before a proper officer by the spouse preparing the return. If neither or both prepare the return, it must be sworn to by both spouses.)

A return made by an agent must be accompanied by power of attorney. (See Instruction E.)

**AFFIDAVIT.** (See Instruction E)

(If this return was prepared for you by some other person, the following affidavit must be executed)  
 I/we swear (or affirm) that I/we prepared this return for the person or persons named herein and that the return (including any accompanying schedules and statements) is a true, correct, and complete statement of all the information respecting the income tax liability of the person or persons for whom this return has been prepared of which I/we have any knowledge.

Subscribed and sworn to before me this 9th day  
 of March, 1940.

(Seal)

**RUTH SAUNDERS**

Notary Public

(Signature and title of officer administering oath)

My Commission Expires March 4, 1942. [48]

.....

(Signature of person preparing the return)

**W. E. BAIRD**

(Signature of person preparing the return)

**BAIRD KURTZ DOBSON**

(Name of firm or employer, if any)

## Joint Exhibit No. 2—(Continued)

## LAWRENCE R. GREEN

## INCOME AND EXPENSES—YEAR 1939

|   |               |              |
|---|---------------|--------------|
| Income                                    |               |              |
| Salaries:                                 |               |              |
| West Missouri Power Company .....         | \$ 12,000.00✓ |              |
| Directors' Fees .....                     | 95.00         |              |
|   | <hr/>         |              |
| Community Income .....                    | \$ 12,095.00  |              |
| One-half to Mrs. Georgia M. Green.....    | 6,047.50      | \$ 6,047.50✓ |
|   | <hr/>         |              |
| Dividends Received (Schedule) .....       |               | 17,956.20✓   |
| Interest Received—Sundry (Schedule) ..... |               | 680.03✓      |
| Interest Received—Corporate Bonds:        |               |              |
| Sundry (Schedule) .....                   | \$ 3,301.25✓  |              |
| 2% Tax Free Covenant (Schedule).....      | 1,055.00✓     | 4,356.25     |
|   | <hr/>         |              |
| Interest Received—Exempt (Schedule) ..... | \$ 2,232.63   |              |
|   | <hr/>         |              |
| Oil Royalties .....                       | \$ 400.82     |              |
| Less: Depletion 27½% .....                | 110.22        | 290.60       |
|   | <hr/>         |              |
| Income from Vancouver Tourist Camp.....   | \$ 678.86     |              |
| Income from Park Hill Property.....       | 106.69        | 785.55       |
|   | <hr/>         |              |

# Joint Exhibit No. 2—(Continued)

Lawrence R. Green—Income and Expenses—Year 1939—(Continued)

|   |        |
|---|--------|
| Net Short-Term Capital Gain (Schedule)..... | 494.65 |
| Net Long-Term Capital Gain (Schedule).....  | 260.00 |

Total Income .....

\$ 30,870.78  
24,194.49

Deductions (Schedule) .....

Net Income .....

\$ 6,676.29✓

[49]

## LAWRENCE R. GREEN

### DEDUCTIONS—YEAR 1939

|   |          |
|---|----------|
| Contributions   |          |
| San Diego Y. M. C. A.....                                 | \$ 50.00 |
| American Red Cross .....                                  | 25.00    |
| Congregational Church .....                               | 25.00    |
| Home Missions of Congregational & Christian Churches..... | 25.00    |

#### Interest Paid

|  |              |
|--|--------------|
| West Missouri Power Company—Note.....    | ✓\$ 7,563.60 |
| L. K. Green Trusts, Kansas City, Mo..... | 8,850.00—?   |



## Joint Exhibit No. 2—(Continued)

|  |   |               |
|--|---|---------------|
| Lawrence R. Green—Deductions—Year 1939—(Continued)   |   |               |
| Interest Paid—(Continued)  |   |               |
| Interest on deficiency of Estate Taxes—Estate of L. K. Green....                           | X | 4,143.01—?    |
| Interest on deficiency of Gift Taxes.....  |   | 57.08         |
|  |   | <hr/>         |
| Taxes Paid   |   |               |
| Real Estate and Personal Taxes .....   |   | \$ 1,423.11   |
| Automobile License .....   |   | 65.10         |
|  |   | <hr/>         |
| California Income Tax .....  |   | 1,488.21      |
| Oklahoma Income Tax .....  |   | 106.81        |
|  |   | 8.91          |
|  |   | <hr/>         |
| Other Deductions   |   |               |
| Legal and Accounting, including re estate tax, gift tax and<br>other old tax matters ..... |   | \$ 1,655.10 X |
| Financial Report Service—Babson .....  |   | 180.00        |
| Rent of Safety Deposit Box.....  |   | 11.00         |
| Discount on Canadian Funds .....   |   | 3.75          |
| Shipping Securities .....  |   | 2.02          |
|  |   | <hr/>         |
| Total Deductions .....   |   | 1,851.87      |
|  |   | <hr/>         |
|  |   | \$24,194.49   |
|  |   | <hr/>         |

20,613.69—?

1,603.93

1,851.87

\$24,194.49

LAWRENCE R. GREEN

DETAILS OF GROSS INCOME

|   |          |
|---|----------|
| Dividends Received                      |          |
| On Common Stocks:                       |          |
| California Packing Corporation .....    | \$ 15.00 |
| Massachusetts Investors Trust .....     | 355.00   |
| Manufacturers Trust Company .....       | 200.00✓  |
| Montgomery Ward & Company.....          | 77.50    |
| International Harvester Company .....   | 16.00    |
| Aetna Insurance Company .....           | 160.00✓  |
| Beech-Nut Packing Company .....         | 250.00   |
| Air Reduction Company .....             | 159.70✓  |
| American Telephone & Telegraph Co. .... | 675.00✓  |
| Chase National Bank .....               | 168.00✓  |
| Great Atlantic & Pacific Tea Co.....    | 375.00✓  |
| Quarterly Income Shares .....           | 50.00    |
| Southern California Edison Co. ....     | 210.00✓  |
| E. I. Dupont de Nemours.....            | 112.50   |
| Standard Oil of Indiana .....           | 37.50    |
| F. W. Woolworth Company .....           | 300.00✓  |
| El Paso Natural Gas Company.....        | 75.00    |
| Standard Oil of California .....        | 85.00    |

## Joint Exhibit No. 2—(Continued)

Lawrence R. Green—Details of Gross Income—(Continued)

Dividends Received—(Continued)

|   |             |
|---|-------------|
| General Electric Company .....            | 270.00      |
| United Gas & Improvement Company .....    | 26.25       |
| Sperry Corporation .....                  | 150.00✓     |
| Missouri Public Service Corporation ..... | 30.00       |
| *West Missouri Power Company .....        | 13,107.00✓  |
|   | <hr/>       |
|   | \$16,904.45 |

## On Preferred Stocks:

|  |             |
|--|-------------|
| American Rolling Mills .....                   | \$ 12.50    |
| Sharon Steel Corporation .....                 | 100.00✓     |
| Sunray Oil Corporation .....                   | 137.49✓     |
| San Diego Consolidated Gas & Electric Co. .... | 63.00       |
| Public Service of Oklahoma .....               | 72.00       |
| Missouri Power & Light Co. ....                | 162.00✓     |
| Escondido Finance Association .....            | 96.00       |
| Sioux City Gas & Electric Company .....        | 140.00✓     |
| Oklahoma Gas & Electric Company .....          | 131.25✓     |
| Memphis Power & Light Company .....            | 137.51✓     |
|  | <hr/>       |
|  | 1,051.75    |
|  | <hr/>       |
|  | \$17,956.20 |
|  | <hr/>       |

\* Marginal figures in pencil: 21 84½

[51]

# Joint Exhibit No. 2—(Continued)

LAWRENCE R. GREEN

## DETAILS OF GROSS INCOME—YEAR 1939

Interest Received—Bank Deposits, Notes, etc.

|   |    |         |
|---|----|---------|
| First National Trust & Savings Bank ..... | \$ | 45.53   |
| West Missouri Power Company .....         |    | ✓634.50 |
|   | \$ | 680.03  |

Interest Received—Corporation Bonds

Sundry:

|                                     |    |          |
|-------------------------------------|----|----------|
| Missouri Public Service Co. ....    | \$ | 105.00   |
| East Missouri Power Co. ....        |    | 2,500.00 |
| New England Gas & Electric Co. .... |    | 100.00   |
| Associated Gas & Electric Co. ....  |    | 18.75    |
| Quarterly Income Shares .....       |    | 2.50     |
| Florida Power Corp. ....            |    | 250.00   |
| Illinois Central R. R. Co. ....     |    | 200.00   |
| Texas Electric Service Corp. ....   |    | 125.00   |
|                                     | \$ | 3,301.25 |

Tax Free Covenant—2%:

|                                   |    |        |
|-----------------------------------|----|--------|
| Virginia Public Service Co. ....  | \$ | 275.00 |
| Central Kansas Power Co. ....     |    | 60.00  |
| Joplin Water Works Co. ....       |    | 250.00 |
| Empire District Electric Co. .... |    | 150.00 |

## Joint Exhibit No. 2—(Continued)

Lawrence R. Green—Details of Gross Income—1939—(Continued)

Interest Received—Corporation Bonds—(Continued)

N. Y. Central &amp; St. Louis R. R. ....

Southern Colorado Power Co. ....

110.00

210.00

1,055.00

---

\$ 4,356.25

---

Interest Received—Municipal and Government Bonds

Cherryvale, Kansas .....

Vista Union High School .....

City of San Diego, California .....

Long Beach, Calif. School .....

State of Arkansas "A" and "B" .....

Esccondido Union High School .....

City of San Diego Standpipe .....

City of San Diego Municipal Pier .....

Yuma County, Arizona .....

Cameron County, Texas .....

California

\$ .....

82.50

240.00

360.00

275.00

25.00

125.00

110.00

369.15

---

\$ 1,025.13

---

90.00

---

\$ 1,117.50

---

Federal Land Bank Consols .....

---

\$ 1,117.50

---

---

\$ 2,232.63

---

---

\$ 1,115.13

---



Joint Exhibit No. 2—(Continued)

LAWRENCE R. GREEN  
CAPITAL GAINS—YEAR 1939

|  |           |                |             |
|--|-----------|----------------|-------------|
| \$3,000 Vista Union High School Bonds:     |           |                |             |
| Bought 7-16-35                             | .....     |                | \$ 3,000.00 |
| Called 2-28-39                             | .....     |                | 3,000.00    |
|  |           |                | <hr/>       |
| Memphis Power & Light Co. Preferred Stock: |           |                |             |
| Sold 7-31-39                               | 30 Shares | .....          | \$ 3,000.00 |
| Bought 9-17-36                             | 10 "      | .....\$ 905.00 |             |
| " 9-26-36                                  | 10 "      | ..... 910.00   |             |
| " 12-6-37                                  | 10 "      | ..... 665.00   |             |
|  |           |                | <hr/>       |
| Sold 7-31-39                               | 10 "      | .....          | \$1,000.00  |
| Bought 4-23-38                             | 10 "      | .....          | 505.35      |
|  |           |                | <hr/>       |
| Total Capital Gain.....                    |           |                |             |
|  |           |                | <hr/>       |
|  |           |                | \$1,014.65  |
|  |           |                | <hr/>       |
|  |           |                | \$ 754.65   |
|  |           |                | <hr/>       |

[Endorsed]: T.C.U.S. Filed Nov. 3, 1942. [53]

In the United States Circuit Court of Appeals  
for the Ninth Circuit

(BTA) Docket No. 109145

JOSEPH D. NUNAN, JR., COMMISSIONER OF  
INTERNAL REVENUE,

Petitioner on Review,

v.

LAWRENCE R. GREEN,

Respondent on Review.

PETITION FOR REVIEW AND ASSIGN-  
MENTS OF ERROR

To the Honorable Judges of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit:

Now Comes Joseph D. Nunan, Jr., Commissioner  
of Internal Revenue, by his attorneys, Samuel O.  
Clark, Jr., Assistant Attorney General, J. P. Wen-  
chel, Chief Counsel, Bureau of Internal Revenue,  
and Claude R. Marshall, Special Attorney, Bureau  
of Internal Revenue, and respectfully shows:

I.

JURISDICTION

That the petitioner on review (hereinafter re-  
ferred to as the Commissioner) is the duly ap-  
pointed, qualified and acting Commissioner of In-  
ternal Revenue, appointed and holding his office  
by virtue of the laws of the United States; that the  
respondent on review, Lawrence R. Green, (some-

times hereinafter referred to as the taxpayer) is an individual residing at San Diego, California, and filed his individual Federal income tax return for the taxable year 1939 with the Collector of Internal Revenue for the Sixth District of California, located at Los Angeles, California, which said collection district is within the jurisdiction of [54] the United States Circuit Court of Appeals for the Ninth Circuit, wherein this review is sought.

The Commissioner seeks a review of the decision of The Tax Court of the United States by the Circuit Court of Appeals for the Ninth Circuit by virtue of the provisions of Sections 1141 and 1142 of the United States Internal Revenue Code.

## II.

### PRIOR PROCEEDINGS

On August 16, 1941, the Commissioner, in accordance with the provisions of existing Internal Revenue laws, advised taxpayer that the determination of his income tax liability for the taxable year 1939 disclosed a deficiency in tax of \$728.18. Thereafter, on November 12, 1941, taxpayer filed a petition with the United States Board of Tax Appeals (now The Tax Court of the United States) for a redetermination of the proposed deficiency. The Commissioner filed his answer to the petition on December 31, 1941. On November 3, 1942, taxpayer filed an amended petition; and on December 11, 1942, the Commissioner filed his answer to the amended peti-

tion. The case was heard before the Tax Court on November 3, 1942, at Kansas City, Missouri; and on January 19, 1944, it promulgated its opinion; and on February 16, 1944, the Tax Court entered its decision, ordering and deciding that there is a deficiency in income tax of \$177.48 for the taxable year 1939.

### III.

#### NATURE OF CONTROVERSY

Taxpayer's father, L. K. Green, died on July 5, 1930, leaving a will making the taxpayer and his brother the residuary beneficiaries of his [55] estate. They shared equally in their father's estate. The estate was duly administered by taxpayer as executor and the assets were distributed; and on October 13, 1931, the executor was discharged and given full and complete release. No assets were retained in the estate.

Thereafter, the Commissioner determined a deficiency in estate tax against the estate of L. K. Green. The matter was finally settled by the taxpayer and his brother paying, in 1939, as transferees of the assets, an estate tax deficiency of \$17,244.81, together with interest as provided by law in the amount of \$8,286.01, which interest was computed to July 8, 1939. Each transferee-beneficiary paid one-half of the deficiency and interest thereon, and each deducted in their respective income tax returns for the taxable year 1939, which were on the cash basis, the amount of \$4,143.00 designated as interest paid on the estate tax deficiency. The Com-

missioner disallowed the deductions in his determination of the deficiency herein.

The amounts received by the beneficiaries from the estate exceeded the amounts of the tax and interest paid.

The Tax Court held that the taxpayer is not entitled to deduct such portion of the interest which accrued upon the tax of the estate prior to distribution, because it clearly accrued upon an indebtedness of the estate and taxpayer received the distribution from the estate subject to a charge for interest accrued to the dates of transfer; but, it further held that the interest which accrued upon the estate tax deficiency after distribution by the estate accrued upon indebtedness of the taxpayer, and that he is entitled to deduct under the provisions of Section 23 (b) of the [56] Internal Revenue Code the amount of such interest paid by him on the estate tax deficiency in computing his net income for income tax purposes.

In reaching its decision, the Tax Court modified its long-standing opinion in *Helen B. Sulzberger*, (1936) 33 B.T.A. 1093. Four Judges of the Tax Court dissented.

The Commissioner presents that the property of the estate was received by taxpayer as transferee and came to him charged not only with a liability for the deficiency in tax, but for interest collectible "as a part of the tax" at the rate of 6% per annum from the due date of the tax (Sec. 891, Internal Revenue Code); that the amounts designated as



interest were not paid upon a personal indebtedness or an obligation of the taxpayer, and is accordingly not deductible under Section 23 (b) of the Internal Revenue Code in determining the amount of net income for income tax purposes.

#### IV.

#### ASSIGNMENTS OF ERROR

That the Commissioner of Internal Revenue, being aggrieved by the opinion and decision of The Tax Court of the United States in this proceeding, hereby petitions for a review of said opinion and decision by the United States Circuit Court of Appeals for the Ninth Circuit, and for the correction of the manifest errors which therein occurred and intervened to his prejudice. The errors committed by the Tax Court, which are relied upon by the Commissioner as the basis of this petition for review, are as follows: [57]

That The Tax Court of the United States erred:

1. In holding and deciding that the interest which accrued upon the estate tax deficiency after distribution of the assets of the estate accrued upon the indebtedness of taxpayer.

2. In failing to hold and decide that the amount designated interest which accrued upon the estate tax liability after distribution of the assets of the estate did not accrue on a personal liability or obligation of taxpayer.

3. In holding and deciding that taxpayer is entitled, under the provisions of Section 23 (b) of the

Internal Revenue Code, to deduct from his gross income the amount of interest paid by him on the estate tax deficiency which accrued thereon after distribution of the assets of the estate.

4. In failing to hold and decide that taxpayer is not entitled to deduct from his gross income the amount designated interest which accrued after the distribution of the assets of the estate and was paid in 1939 by him.

5. In that its opinion and decision are contrary to the law and the regulations, and are not supported by substantial evidence.

6. In ordering and deciding that there is a deficiency in income tax of only \$177.48 for the year 1939, due from taxpayer herein.

7. In failing to order and decide that there is a deficiency in income tax of \$648.27 for the year 1939, due from taxpayer herein. [58]

Wherefore, the Commissioner petitions that said findings of fact and opinion and decision of The Tax Court of the United States be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said Court and be transmitted to the Clerk of the said Court for filing, and that appropriate action be

taken to the end that the errors herein complained of may be reviewed and corrected by said Court.

(Signed) SAMUEL O. CLARK, JR.,  
SLY

Assistant Attorney General.

(Signed) J. P. WINCHEL,  
SLY

Chief Counsel, Bureau of Internal Revenue,  
Counsel for Petitioner on Review.

Of Counsel:

CLAUDE R. MARSHALL,  
Special Attorney,  
Bureau of Internal Revenue.

CRM/csl 3/1944.

[Endorsed]: Filed May 5, 1944. [59]

---

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW

To: Lawrence R. Green,  
2440 Pine Street,  
San Diego, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 5th day of May, 1944, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for

the Ninth Circuit, of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 5th day of May, 1944.

Signed J. P. WENCHEL

SLY

Chief Counsel, Bureau of Internal Revenue,  
Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 11 day of May, 1944.

(Sgd) LAWRENCE R. GREEN,  
Respondent on Review.

CRM/csl 4/1944.

[Endorsed]: Filed May 18, 1944. [60]

---

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW

To: W. E. Baird, C.P.A.,  
701 Fidelity Building,  
Kansas City, Missouri.

You are hereby notified that the Commissioner of Internal Revenue did, on the 5th day of May,

1944, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 5th day of May, 1944.

Signed J. P. WENCHEL,

SLY

Chief Counsel, Bureau of Internal Revenue,

Counsel for Petitioner on Review.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 10 day of May, 1944.

(Sgd) W. E. BAIRD,

Counsel for Respondent on Review.

CRM/csl 4/1944.

[Endorsed]: Filed May 16, 1944. [61]



The Tax Court of the United States  
Washington

Docket No. 109145

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

v.

LAWRENCE R. GREEN,

Respondent.

CERTIFICATE OF CLERK

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 65, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 13th day of June, 1944.

[Seal]

B. D. GAMBLE,

Clerk, The Tax Court of the  
United States.

[Endorsed]: No. 10810. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Lawrence R. Green, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed June 21, 1944.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

---

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 10810  
(BTA) Docket No. 109145

JOSEPH D. NUNAN, JR., Commissioner of Internal Revenue,

Petitioner on Review,

v.

LAWRENCE R. GREEN,

Respondent on Review.

STATEMENT OF POINTS ON WHICH PETITIONER ON REVIEW INTENDS TO RELY ON THE APPEAL

To Lawrence R. Green, 2440 Pine Street, San Diego, California, and W. E. Baird, 701 Fidelity Building, Kansas City, Missouri.

Please take notice that Joseph D. Nunan, Jr.,

Commissioner of Internal Revenue, petitioner on review in the above entitled action, intends to rely on the appeal on the following points:

That the Tax Court of the United States erred:

1. In holding and deciding that the interest which accrued upon the estate tax deficiencies after distribution of the assets of the estates accrued upon the indebtedness of taxpayer.

2. In failing to hold and decide that the amounts designated interest which accrued upon the estate tax deficiencies after distribution of the assets of the estates did not accrue on personal liabilities or obligations of taxpayer.

3. In holding and deciding that taxpayer is entitled, under the provisions of Section 23 (b) of the Internal Revenue Code, to deduct from his gross income the amounts of interest paid by him on the estate tax deficiencies which accrued thereon after distribution of the assets of the estates.

4. In failing to hold and decide that taxpayer is not entitled to deduct from his gross income the amounts designated interest which accrued after the distribution of the assets of the estates and were paid in 1939 by him.

5. In that its opinion and decision are contrary to the law and the regulations, and are not supported by substantial evidence.

6. In ordering and deciding that there is a deficiency in income tax of only \$333.38 for the year 1939, due from taxpayer herein.

7. In failing to order and decide that there is a

deficiency in income tax of \$1,201.94 for the year 1939, due from taxpayer herein.

SAMUEL O. CLARK, JR.,  
Assistant Attorney General.

(Affidavit of Mailing attached.)

[Endorsed]: Filed July 8, 1944.

---

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF RECORD,  
PROCEEDINGS AND EVIDENCE TO BE  
CONTAINED IN RECORD ON REVIEW

To the Clerk of the United States Circuit Court of  
Appeals for the Ninth Circuit:

Please take notice that Joseph D. Nunan, Jr., Commissioner of Internal Revenue, petitioner on review, hereby designates the entire record in the above entitled proceeding which the petitioner on review thinks necessary for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit on review of the decision of the Tax Court of the United States in said proceeding entered February 16, 1944. Said record consists of the following documents and records:

1. Docket entries of the proceedings.
2. Pleadings:
  - (a) Petition, including annexed copy of deficiency notice with statement attached.
  - (b) Answer.
  - (c) Amended Petition.
  - (d) Answer to Amended Petition.

3. Opinion of Tax Court.
4. Decision of Tax Court entered February 16, 1944.
5. (a) Stipulation of Facts filed November 3, 1942.  
(b) Joint Motion to Amend Stipulation of Facts.
6. Copy of Joint Exhibit No. 1.
7. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.
8. Any and all orders of enlargement of time for the preparation of the evidence and for the transmission and delivery of the record.
9. This Designation.

Transcript of said record had been prepared, certified and transmitted to the above entitled court by the Clerk of the Tax Court of the United States, as required by law and the rules of the above entitled court.

SAMUEL O. CLARK, JR.,  
Assistant Attorney General.

[Endorsed]: Filed July 8, 1944.



